HIGH COURT OF UTTARANCHAL AT- NAINITAL.

Writ Petition No. 1355 (S/S) 2005

Brij Lal Pyasa S/o Sri Nathi Lal,
R/o Ashis Bhawan Kritinnagar,
District Tehri Garhwal. ....Petitioner.

Vs.

1. State of Uttaranchal through Secretry,
   Food and Supply Subhash Nagar,Dehradun,
2. Commissioner, Garhwal Mandal Pauri,
   District Pauri Garhwal.
3. District Magistrate, Tehri Garhwal,
4. District Supply Officer, New Tehri,
   District Tehri Garhwal. ---Respondents.

Sri Vinod Nautiya, learned counsel for the petitioner.
Learned Standing Counsel for respondents.

Hon'ble M.M. Ghildiyal, J.:

Heard Sri Vinod Nautiyal, learned counsel for the petitioner and learned Standing Counsel who accepts notices for the respondents.

Vide order dated 23.02.2004 passed by the District Magistrate, Tehri Garhwal, the petitioner, who is Supply Inspector, was transferred from Dhoomatoli/Holanakhal to Maleth (Kirtinagar) district Tehri Garhwal on the request of the wife of Sri Prem Singh Negi, Supply Inspector who at the relevant time was serving at Maletha. The Commissioner Garhwal Division on 29.05.2005, stayed operation of the order dated 23.02.2004 passed by the District Magistrate, Tehri Garhwal. On 08.08.2005, the Commissioner Garhwal Division has passed fresh order directing the District Magistrate and the District Supply Officer, Tehri Garhwal to implement the transfer order dated 23.02.2004 by which the petitioner was transferred from Holanakhal/Dhoomatoli to Maletha

(Kirtinagar) district Tehri Garhwal. The said order was not complied with by the District Magistrate and the District Supply Officer, Tehri Garhwal, hence the petitioner has filed the present writ petition with the following reliefs-

a. Issue a writ, order or direction in the nature of mandamus directing the respondent nos. 3 & 4 to comply the order dated 23.02.2004.
b. Issue a writ, order or direction in the nature of mandamus directing the respondent nos. 3 & 4 to comply the order dated 08.08.2005 passed by the Commissioner, Tehri Garhwal.

Counsel for the petitioner has submitted that since the District Supply Officer has not passed any order to relieve the petitioner from Holanakhal/Dhoomatoli, the original order of transfer as well as the subsequent order of Commissioner dated 08.08.2005 could not be implemented. Considering all these circumstances, this Court on 18th October 2005 directed the District Supply Officer, Tehri Garhwal to remain present before this Court on 7th November 2005 to show cause as to why he is not complying the orders passed by the Commissioner on 08.08.2005.

The District Supply Officer is present today before the Court. No affidavit has been filed by him showing the cause sought for. The District Supply Officer has drawn y attention towards order dated 8th September 2005 passed by the District Magistrate, Tehri Garhwal by which the petitioner has now been transferred from Holanakhal/ Dhoomatoli to Chauki, district Tehri Garhwal and has submitted that the petitioner is not interested to join at new place of his transfer. This fact has not been denied by the counsel for the petitioner.

It was informed that before passing of the transfer order dated 8th September 2005, the petitioner was previously

transferred to Chamba vide order dated 16th September 2004 passed by the District Magistrate, Tehri Garhwal but the petitioner did not join at Chamba and insisted that he should be given charge of Godown at Maletha were he was transferred vide order dated 23.02.2004. the parties do not dispute it that the power to transfer the petitieonr within the district, vests upon the District Magistrate and for transfer of the Supply Officer within the State, the jurisdiction vests with the Food Commissioner, Uttaranchal.

Counsel for the petitioner has submitted that the earlier transfer order dated 23.02.2004 has not been superseded/ cancelled.

Since, the earlier transfer order was stayed by the Commissioner vide its order dated 29.05.2005 and the order passed by the Commissioner was not complied with by the District Supply Officer as well as by the District Magistrate, Tehri Garhwal hence the District Magistrate and the District Supply Officer are bound to obey the orders passed by the Commissioner on 08.08.2005 wherein he has directed them to implement the earlier transfer order dated 23.02.2004.

This Court is not the executing Court of the orders passed by the officers of the State Government. So far the petitioner is concerned, he has been transferred vide order dated 16.09.2004 from Holanakhal/dhoomatoli to Chamba but he did not join there. Again vide order dated 8th September 2005 he was transferred to Chauki and again he did not join at Chauki and insisted to take charge of the Godown at Maletha.

The transfer is an exigency of service and the petitioner is bound to obey the orders passed by the superiors by complying their orders. Twice the petitioner has been transferred to different places but he did not join there. In these circumstances, if the petitioner is willing to join, he shall be

permitted to join at new place of posting within a period of three weeks from today and if the petitioner is reluctant to join, the Department is at liberty to take action against him.

The writ petition is disposed of accordingly.

(M.M. Ghildiyal, J.)

November 7, 2005:
NCM: